

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Main Street America Assurance Company, :
:
Plaintiff, :
:
v. : Case No. 2:21-cv-03977 (MAK)
:
Howard Lynch Plastering, Inc. :
:
and :
:
W.B. Homes, Inc., :
:
Defendants. :

STATEMENT OF UNDISPUTED FACTS

In support of its motion for summary judgment, or alternatively for default judgment, Main Street America Assurance Company (“MSAAC”) submits this statement of undisputed facts.

DEFINITIONS

- A. “Ashbourne Report” means the stucco inspection report for 926 Ashbourne Way.
- B. “Claims” means the claims brought by the 32 homeowners of single-family homes against W.B. Homes identified in paragraph 3 and footnote 1 of the Complaint for alleged construction defects at the Homes.
- C. “Complaint” means the complaint filed by MSAAC in the above-captioned action with ECF No. 1.
- D. “Desnoyers Arbitration” means the private arbitration brought by Rodwige and Camille Desnoyers against W.B. Homes in 2015.
- E. “Desnoyers Complaint” means the complaint for private arbitration filed by Rodwige and Camille Desnoyers to commence the Desnoyers Arbitration, a copy of which is attached as Exhibit G to the Complaint.

F. "Homes" means the 34 single family homes identified in paragraphs 3 and 4 of the Complaint.

G. "Howard Lynch" means Howard Lynch Plastering, Inc.

H. "Insurance Certificates" means the insurance certificates that Howard Lynch provided to W.B. Homes regarding its purchase of liability insurance.

I. "Joinder Complaint" means the complaint to join Howard Lynch that W.B. Homes filed in the McGinnis Lawsuit, a copy of which is attached as Exhibit F to the Complaint.

J. "McGinnis Complaint" means the initial complaint in the McGinnis Lawsuit, a copy of which is attached as Exhibit E to the Complaint.

K. "McGinnis Lawsuit" means the lawsuit captioned *William McGinnis and Rose Marie McGinnis v. W.B. homes, Inc., et al.*, Civil Action No. 2018-19272, which was filed on or about July 31, 2018, in the Court of Common Pleas of Montgomery County, Pennsylvania.

L. "MSAAC Policies" means MSAAC policy number MPU2185F which was in effect for the policy periods November 1, 2011 to November 1, 2012; November 1, 2012 to November 1, 2013; and November 1, 2013 to November 1, 2014, certified copies of which are attached as Exhibits A, B and C to the Complaint.

M. "Subcontract" means the "Agreement Between Contractor and Subcontractor" between Lynch and W.B. Homes dated March 19, 2008, a copy of which is attached as Exhibit D to the Complaint.

UNDISPUTED FACTS

1. MSAAC issued the MSAAC Policies to Howard Lynch. Joint Stipulation of Facts and Authentic Documents filed contemporaneously with this Statement ("Stip.") ¶ 1.

2. The homeowners' Claims and the claims alleged in the Legal Proceedings seek damages caused by the allegedly defective construction of the Homes. Stip. ¶ 2.

3. The Desnoyers Arbitration was filed in November 2015, arbitrated in 2018, and ultimately settled without MSAAC's involvement. Stip. ¶ 3.

4. Mr. and Mrs. Desnoyers arbitrated the Desnoyers Arbitration with W.B. Homes in 2018 and ultimately settled. Stip. ¶ 4.

5. Mr. and Mrs. McGinnis filed the McGinnis Lawsuit against W.B. Homes and several of its affiliated entities in July 2018. Stip. ¶ 5.

6. MSAAC received notice of the McGinnis Lawsuit from Nationwide Insurance Company in April 2020. Stip. ¶ 6.

7. In May 2020, W.B. Homes and its affiliates filed the Joinder Complaint. Stip. ¶ 7.

8. Howard Lynch was served with the Joinder Complaint in August 2020. Stip. ¶ 8.

9. MSAAC has undertaken to defend Howard Lynch in the McGinnis Lawsuit and is currently defending Howard Lynch in the McGinnis Lawsuit. Stip. ¶ 9.

10. Homeowners of the 32 Homes at issue in the Claims notified W.B. Homes of defective construction of the Homes between October 3, 2010, and March 23, 2018. Stip. ¶ 10.

11. W.B. Homes remediated (or paid for remediation of) Homes at issue in the Claims from October 2010 through October 2019. Stip. ¶ 11.

12. On January 31, 2020, W.B. Homes' insurance agent emailed MSAAC, informing MSAAC that W.B. Homes was seeking coverage for reimbursement of "significant expense" incurred by W.B. Homes to "repair property damage as a result of operations performed on several private residences by Howard Lynch." Stip. ¶ 12.

13. The Ashbourne Report describes the property damage from which the Claim related to the property at 926 Ashbourne Way arises. Stip. ¶ 13.

14. The property damage described in the Ashbourne Report is substantially similar to the property damage sustained at each of the Homes, both as to the nature of the property damage and the cause of the property damage. Stip. ¶ 14.

Dated: January 25, 2022

Respectfully submitted,

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